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EXAMINER

HARMON, CHRISTOPHER R

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/764,673
Filing Date: January 18, 2001
Appellant(s): RAMESH ET AL.

**MAILED
MAY 18 2007
GROUP 3700**

Rupert B. Hurley, Jr.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 1/22/07 appealing from the Office action mailed 1/20/06.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

The amendment filed 9/28/06 has been entered.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

EP 0149321	Ohya	7-1985
4,448,792	Schirmer	5-1984

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 29-38 and 40-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson et al. (US 3,130,647) in view of Ohya (EP 0149321).

Anderson et al. disclose a process for making a backseamed casing comprising preparing a multilayer heat shrinkable film, wrapping the film longitudinally around a forming shoe 43 with opposing edges overlapped and sealed forming a backseam while forwarding the film; see figure 13. Anderson discusses varying the thickness of at least one ply of the multilayer web; see column 3, lines 10-15 and lists possible materials such as "polyethylene, styrene, nylon, vinylidene and chloride fluorocarbon plastic being representative, but not exclusive.", column 4, lines 7-8. Anderson does not directly disclose the construction of the film as claimed.

Ohya teaches preparing a multilayer heat shrinkable film comprising a first and third outer layers comprising anhydrous polyolefin (preferred list page 6, 2nd paragraph);

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second layer comprising polyester or a first polyamide of 5 to 40% thickness (of total);

fourth layer of VDC (O₂ barrier layer); see page 2 and 11.

It would have been obvious to one of ordinary skill in the art to use the materials as taught by Ohya in the invention to Anderson et al. for manufacturing the backseamed casing in order to provide for a bag with desired qualities.

Regarding claim 45, Anderson et al. disclose a lap seal (figure 2).

As admitted, (See Final Rejection of 1/20/06), limitations such as vicat softening points of 90 degrees (claim 33), 9% by weight of unsaturated acid mer present (claim 34), variations of layering, etc. are obvious design choices and at the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to provide the desired polymer layer. See also 37 CFR 1.111(b). See MPEP 2144.03(c) and also Chevenard, 139 F.2d at 713, 60 USPQ at 241.

Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson et al. (US 3,130,647) in view of Ohya (EP 0149321) in further view of Schirmer (US 4,448,792).

Anderson et al. do not directly disclose three to six layers of film forming the multilayer film, however Schirmer teaches constructing a thermoplastic heat shrinkable multilayer (six layers) bag, see figures 1 and 2. Schirmer also teaches oxygen barrier layer 14 comprising polyvinylidene chloride copolymer. The casing film shrinks in near boiling water or 185 degrees F, see column 4, lines 43-45. Schirmer discloses using propylene homopolymers or copolymers for a specific layer (see column 3, lines 58-67).

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It would have been obvious to one of ordinary skill in the art to add layers as taught by Schirmer in the modified invention to Anderson et al.

(10) Response to Argument

Applicant's arguments filed 1/22/07 have been fully considered but they are not persuasive.

In response to applicant's argument that the claimed invention solves a "necking down" problem, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

Note the recited process steps do not include any discussion of "necking down" or how to achieve avoidance thereof. The claimed subject matter is not claimed with sufficient specificity to describe a novel process. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The claimed process merely involves providing a known material, as evidenced by Ohya, in a known bag forming process as disclosed by Anderson.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

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4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

One of ordinary skill in the art would have recognized the bag material of Ohya as capable for use in the bag forming process of Anderson in order to make a bag with a layered wall construction for its desired qualities.

A person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond that person's skill. One must ask whether the improvement is more than the predictable use of prior-art elements according to their established functions.

To determine whether there was an apparent reason to combine the known elements in the way a patent claims, it will often be necessary to look to interrelated teachings of multiple patents; to the effects of demands known to the design community or present in the marketplace; and to the background knowledge possessed by a person having ordinary skill in the art. The analysis need not seek out precise teachings directed to the challenged claimed specific subject matter, for a court can consider the inferences and creative steps a person of ordinary skill in the art would employ.

Under the correct analysis, any need or problem known in the field and addressed by the patent can provide a reason for combining the elements in the manner claimed; see *KSR Int. v. Teleflex 550 US*__ (2007).

In the instant case the bag forming process of Anderson could be employed by one of ordinary skill in the art using the bag material of Ohya. Note that Anderson

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directly discusses using multiple layered films and suggests the use of various types from a list which is not meant to be exclusive; see column 4, lines 7-8.

Regarding the limitation of wrapping "around" a forming shoe, note that the material is wrapped around the interior of the forming shoe and around the outside of forming shoe element 43 of Anderson, a critical element of the bag former; see figure 13. Note that during patent examination, the pending claims must be interpreted as broadly as their terms reasonably allow. *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 320,322 (Fed. Cir. 1999). In determining the patentability of claims, the PTO gives claim language its broadest reasonable interpretation" consistent with the specification and claims. *In re Morris*, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997). See MPEP § 904.1.

Regarding Anderson et al., the forming shoe includes forming surface 43 which extends inside (ie. completely encircled) the longitudinally wrapped web in order to form the backseam. While the web does wrap around the inner surface of the cylindrical portion of the former/shoe, element 43 is considered an essential part of the forming shoe; see figure 13. The claims fail to differentiate a forming shoe from a sealing member.

Regarding the arguments against the obviousness of the combination, secondary considerations of evidence of unexpected results are given added weight and/or consideration when in the form of an affidavit or declaration filed under 37 CFR 1.132. The arguments presented are not persuasive.

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Regarding the arguments against Anderson in view of Ohya and Schirmer, Anderson discloses a process including a multilayered film wrapped around a forming shoe and sealed to form a backseamed casing which is then forwarded off the forming shoe as discussed supra.

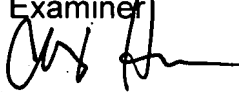
(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Chris Harmon, Primary Examiner
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